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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/493,530 01/26/00 PONSCHIRN

D 60,158-007

IM31/0803

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EXAMINER

NOLAN S

ART UNIT

PAPER NUMBER

1772

DATE MAILED:

08/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.
09/493,530

Applicant(s)
PONTBRIAND et al

Examiner
Sandra Nolan

Art Unit
1772



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jul 12, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

4. ☒ Applicant's reply has overcome the following rejection(s):
the 35 USC 112 rejection.
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in separate, timely filed amendment cancelling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
(See the enclosed attachment.)
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
Claim(s) allowed: None
Claim(s) objected to: None
Claim(s) rejected: 1, 2, 4-8, and 10-12
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
11. ☐ Other: _____

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ATTACHMENT TO ADVISORY ACTION

Claims

1. Following entry of the amendment in the response dated July 12, 2001 (Paper No. 8), claims 1, 2, 4-8, and 10-12 are pending.

Rejections Withdrawn

2. The 35 USC 112 rejection of claims 1, 2, and 4-7 as indefinite, as recited in paragraph 10 of the Final Rejection dated May 11, 2001 (Paper No. 7), is withdrawn in view of Applicants' comments in Paper No. 8.

Rejections Maintained

3. The 35 USC 103 rejection of claims 1, 4-8 and 10-12 as unpatentable over Anderson et al in view of the Crea Nova bulletin, as stated in par. 12 of the October 23, 2000 Office Action (Paper No. 4) and repeated in par. 7 of Paper No. 7, is maintained for reasons of record.
4. The 35 USC 103 rejection of claims 2 as unpatentable over Anderson et al in view of the Crea Nova bulletin and Sakakibara et al (US 4,268,542), as recited in par. 13 of paper No. 4 and repeated in par. 8 of Paper No. 7, is maintained for the reasons already given.

Response to Arguments

5. Applicants' arguments filed in Paper No. 8 have been fully considered but they are not persuasive.

The 35 USC 112 Rejection

The 35 USC 112 rejection has been withdrawn.

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The 35 USC 103 Rejections

On page 3 of Paper No. 8, Applicants restated their previous argument that there is no motivation to employ the Crea Nova VESTOSINT particles in the Anderson et al coatings, alleging that there is no benefit to such use.

The Examiner disagrees. The Crea Nova bulletin states that their particles provide:

- . improved film properties in coating systems (page 1, line 5)
- . the use of smaller amounts of binder (page 1, line 6)
- . structure in coatings (page 4, line 2)
- . improved abrasion resistance of coatings (page 4, line 2).

The Examiner finds that any one of these provides both motivation for and benefit derived from the use of the Crea Nova particles in the Anderson et al coatings.

Applicants argue that (1) Anderson et al's coating is used to give corrosion resistance, (2) the Crea Nova particles impart structure and abrasion resistance and (3) somehow the combination of (1) and (2) could not provide a benefit to the Anderson et al coatings.

The Examiner disagrees. The addition of structure and abrasion resistance to the Anderson et al coatings would give them more integrity and prevent their abrasion. It is difficult to understand how these properties would not be considered beneficial.

Final Rejection

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra M. Nolan, whose telephone number is (703) 308-9545. The examiner can normally be reached on Monday through Thursday from 7:00 am to 4:00 pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (703) 308-4251. The fax phone number for the art unit is (703) 305-5408. The telephone number for the receptionist is (703) 308-0661.



SMN/smn
August 1, 2001
09493530.3


HAROLD PYON
SUPERVISORY PATENT EXAMINER

1772

8/1/01